

ENTERED

June 28, 2018

David J. Bradley, Clerk

Michael Martin,

Plaintiff,

*versus*NES Global, LLC, *et al.*,

Defendants.

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Civil Action H-16-3621

Opinion on Summary Judgment

I. *Background.*

From March 2015 to November 2015, Michael Martin worked as a piping engineer at Technip USA, Inc. Staffing and payroll company NES Global, LLC, paid him. Technip and he agreed on an hourly rate of \$70. With NES Global, he negotiated an additional five-dollar bonus for choosing it over other payroll companies, for a total of \$75 per hour. Martin says that when he worked more than 40 hours in a week, he was paid his usual hourly rate instead of one and one-half times that rate.

In 2016, the Department of Labor audited NES Global's pay practices, determining that it had mislabeled some non-exempt employees as exempt. NES Global told Martin about the audit. He asked for a calculation of his unpaid overtime compensation. Based on its internal records, it told him that he had worked 265 overtime hours and calculated the amount that it owed him according to the \$70 base rate, not the \$75 base-plus-bonus rate. He initially agreed to accept the funds from the settlement but before they were deposited in his account, he said that he wanted to withdraw his acceptance. He then filed suit.

NES Global is Martin's employer. It, not Technip, paid Martin. The court has dismissed the claims against Technip without prejudice.

2. *Settlement.*

At the conclusion of the audit, NES Global and the Department of Labor agreed that NES Global would pay hourly employees the additional half-time for overtime hours worked from May 30, 2014, to May 27, 2016. They calculated the sum that each worker was due.

On November 30, 2016, NES Global told Martin the results of the audit and said that it had a check ready to pay him in exchange for his settling his potential wage claims against it. It explained that either accepting and depositing the check or signing the waiver would constitute a settlement.

That same day, Martin sent an email to NES Global's in-house counsel, Chelsea Sloan, asking how much he would be paid. She told him that the Department of Labor had determined that he was owed \$9,275 and sent him the calculations that it had used to reach that conclusion. Martin then reviewed his records and spoke with someone at the Department of Labor to confirm that the amount was accurate.

Later in the day, Martin sent an email to Sloan saying that he reviewed the numbers, thought they were correct, and accepted that receipt of the check would foreclose future lawsuits. He asked her to deposit the check directly to his bank account.

On December 6 – the day NES Global was to deposit the funds – he sent another email to Sloan. This time he told her not to deposit the funds because he wanted to reconsider his options. Three days later, he filed suit.

Martin and NES Global reached an agreement. NES Global offered to pay him the amount that the Department of Labor decided it owed him. Martin accepted, agreeing to settle his potential wage claims against it. Martin later tried to withdraw his acceptance. While the paperwork was being processed, Martin tried to cancel his contract. NES Global did not consent. It takes two parties to cancel an agreement.

It is possible for one party to offer a deal that the other party could accept by depositing money in an account. That is not this situation. NES Global offered; Martin accepted.

The court will enforce the settlement. This is not a purely private settlement. The Department of Labor supervised and approved the settlements between NES Global and its employees.¹ Even if it were only between Martin and NES Global, they dispute whether NES Global owes him money and whether the amount it repays him should be based on the \$70 or the \$75 rate.²

3. *Conclusion.*

Technip USA, Inc., has been dismissed.

Michael Martin's motion for partial summary judgment will be denied. NES Global's motion for summary judgment will be denied in part.

Michael Martin will take \$9,275 from NES Global, LLC.

Signed on June 27, 2018, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'L. N. Hughes', is written over a horizontal line.

Lynn N. Hughes
United States District Judge

¹29 U.S.C. §216(c).

²See *Martinez v. Bohls Bearing Equipment Co., et al.*, 361 F.Supp. 2d 608 (W.D. Tex. 2005).